

# REIS & KIRKLAND

October 11, 2018

Lynmarie C. Cusack, Esq.  
Lawrence M. Edelman, Esq.  
Civil Bureau  
Attorney General's Office  
33 Capitol Street  
Concord, NH 03301

Jonathan A. Lax, Esq.  
Devine Millimet & Branch, PA  
111 Amherst Street  
Manchester, NH 03101

Re: Bryan H. Benham v. MHM Correctional Services, Inc. and New Hampshire Department of Corrections

Dear Lyn, Larry and Jonathan,

Enclosed please find an executed Settlement, General Release and Agreement. Mr. Benham signed the release in duplicate so originals are being provided to both MHM Correctional Services, Inc. and New Hampshire Department of Corrections.

Although the [REDACTED] lien remains unresolved, I understand that our agreement to place the full amount of the lien in escrow (\$25,293.05) until that issue is resolved will allow us to proceed with payment of the settlement. Therefore, please provide us with the settlement checks at your earliest convenience.

Does one of you whish to circulate docket markings for signatures and filing?

Thank you.

Very truly yours,



Randolph J. Reis  
[Randy@reiskirkland.com](mailto:Randy@reiskirkland.com)

RJR/db  
Enclosure  
cc: Bryan H. Benham (w/ enclosure)  
Richard J. Walsh, Esq. (w/ enclosure, via email)

## **SETTLEMENT, GENERAL RELEASE AND AGREEMENT**

This Settlement, General Release and Agreement is made and entered into by the Department of Corrections; MHM Services, Inc.; (hereinafter Defendants or Released Parties); and Bryan Benham (Plaintiff or Claimant), with regard to claims asserted, that could be asserted, that are known or unknown, past, present, or future, related to, directly or indirectly the medical care provided to Plaintiff while incarcerated with the Department of Corrections as described or incorporated in the civil action originally filed in the Merrimack County Superior Court and docketed as 217-2017-CV-00156.

The Plaintiff and the Defendants desire to enter into this Settlement, Release and Agreement, in order to provide for certain payments in full settlement and discharge of all claims which are or might have been the subject of the injuries and claims made by Benham against the Defendants (or former released Defendants) upon the terms and conditions set forth herein.

All parties hereto expressly state and agree that the resolution of this matter shall be in no way construed as an admission or a concession of position. Instead, all parties hereto expressly agree that the resolution of this matter as set forth in this agreement represents an efficient resolution to the related claims and disputes.

### **I. DEFINITIONS**

As used herein, the following definitions shall apply:

**“CLAIMANT” means:**

Bryan H. Benham or any similarly named individual, including: his heirs; administrators; personal representatives; past, present, and future officers; directors, and stockholders, attorneys, agents, servants, representatives, employees, parents, subsidiaries, affiliates, partners, predecessors, successors-in-interest, assigns, insurers, underwriters, joint ventures, and all other firms, persons, or corporations with whom he might have been, is now, or may hereafter be affiliated;

**“RELEASED PARTIES” means:**

(A) MHM Services, Inc., Centurion LLC, (collectively referred to as “MHM”) or any parent companies, subsidiaries, joint ventures partners, subsidiaries, related companies, assigns or similarly named corporation, including: personal representatives; past, present, and future officers; directors, stockholders; board members; attorneys; agents; servants; representatives; current and former employees (including without limitation Sheena McAroy and Jeffery Fetter); subsidiaries; affiliates; partners; predecessors; successors-in-interest; assigns; insurers; underwriters; joint ventures; and all other firms, persons, or corporations with whom it might have been, is now, or may hereafter be affiliated; *and*

(B) The State of New Hampshire and its executive agency the Department of Corrections (DOC), including its past, present, and future elected officials, officers, agents, servants, and employees (including without limitation Judy Baker, Bernadette Campbell, Jessica Pelletier, Ryan Landry, Linda Falardeau, Kerry Rainville, Michelle Goings, Scott Lambertson, Misty Gagne, and Paula Mattis).

“CLAIMS” means:

- (A) all existing and future injury and/or damage claims, including, economic losses, actual damages, pecuniary losses, mental anguish, physical pain and emotional anguish suffered by the CLAIMANT, medical expenses, loss of earning capacity, incidental costs, out-of-pocket expenses, interest, emotional trauma, physical injury, bodily harm, attorney’s fees, costs of court, and any and all other damages, expenses, or claims, that were asserted or could have been asserted, including loss as a result of paying and/or satisfying any third party’s claims, and causes of action for all existing and future damages, and remedies arising out of or related to docket #217-2017-CV-00156 that have been or could be asserted by CLAIMANT, including any claim premised upon agency by estoppel or ostensible agency.
- (B) Under this definition, “CLAIMS” also includes, but is not limited to: all claims, demands, liens, debts, interventions, cross-actions, counter-claims, third-party actions, and any causes of action of any nature, including contractual, extra-contractual or equitable claims or rights of action created by any statute, regulation, or existing under common law; and all claims for constitutional violations, negligence, gross negligence, breach of contract, breach of implied contract, fraud, fraudulent concealment, conspiracy, bad faith, deceptive trade practices, arising out of or related to the docket #217-2017-CV-00156.
- (C) The definition of “CLAIMS” further includes: all past, present, and future injury, losses and damages of any kind arising out of or related to the medical treatment received while incarcerated; including, but not limited to, all actual damages, incidental damages, consequential damages, exemplary and punitive damages, personal injury damages, property loss or damage, penalties of any kind, attorneys fees, costs, taxable costs, pre-judgment and post-judgment interest, and other expenses, including judgment liens, and any other form of intervention in connection with said injuries or other damages sustained by the CLAIMANT.

- (D) The definition of “CLAIMS” further includes, but is not limited to, all elements of damages, all remedies, and all claims, demands, and causes of action that are now recognized by law or that may be created or recognized in the future in any manner, including without limitation, by statute, regulation, or judicial decision arising out of or related to the medical treatment while incarcerated, including, without limitation, claims premised upon violations of any provisions of the New Hampshire or the United States Constitutions or the Americans with Disability Act.
- (E) It is the intention of the parties executing this Settlement, General Release and Agreement that it be as general as possible and that it shall cover every conceivable contingency which might arise in the future, whether known or unknown at this time related to the medical treatment while incarcerated as described in docket #217-2017-CV-00156.

“CONSIDERATION” means:

- (A) the payment and other good and valuable consideration, by or on behalf of the RELEASED PARTIES to the CLAIMANT and/or those entities whom they may designate, to be applied to a full and final settlement, as to the PARTY and of the claims referenced herein, of the medical treatment and ALL CLAIMS related thereto, of the following:
  - (1) Payment in the sum of \$475,000.00 (four hundred seventy five thousand dollars and no cents) made payable to the law firm of Reis and Kirkland LLP.
- (B) The payment referenced herein above constitute the total monetary payment to be made to and for CLAIMANTS by or on behalf of the RELEASED PARTIES for ALL CLAIMS, together with all the promises, agreements, and representations set forth below.
- (C) The payment referenced above may be made in multiple parts, with payment being made by each of the RELEASED PARTIES.

In this Agreement, the singular includes the plural and vice versa; likewise, the disjunctive includes the conjunctive and vice versa.

## **II. THE AGREEMENT**

IN CONSIDERATION of the mutual covenants and conditions hereafter set forth, CLAIMANTS hereby agree as follows:

## **A. RELEASES AND DISCHARGES**

For the CONSIDERATION set forth herein, CLAIMANT RELEASES, ACQUITTS, and FOREVER DISCHARGES the RELEASED PARTIES from ALL CLAIMS.

CLAIMANT acknowledges the receipt and sufficiency of the CONSIDERATION by signing this Agreement. The payment of the CONSIDERATION is not an admission of liability or negligence by the RELEASED PARTIES and may not be so construed, nor shall it ever be used as evidence of liability of the RELEASED PARTIES in any suits, claims or causes of action whatsoever.

CLAIMANT acknowledges that the CONSIDERATION described above and its subparagraphs herein constitutes the total monetary payment to be made to and for CLAIMANTS by or on behalf of the RELEASED PARTIES for ALL CLAIMS.

## **B. THE CONSIDERATION**

The CONSIDERATION will be all the monies that the CLAIMANT shall receive from the RELEASED PARTIES. No party shall be awarded costs or attorney's fees, and therefore the CLAIMANT shall be responsible for paying all costs, including attorney's fees, which they have incurred during the litigation of this claim.

The CLAIMANT acknowledges that the sum above represents the total amount of money which the RELEASED PARTIES are obligated to pay the CLAIMANT to settle any and all claims that were or that could have been asserted in the lawsuit related to the medical treatment CLAIMANT received while incarcerated.

The DEPARTMENT OF CORRECTIONS agrees that no claim for reimbursement for the cost of care, pursuant to RSA 622:55 and :56, shall be made against the claimant for any cost of care associated with any incarceration prior to the signing of this release. This provision is inapplicable to any new incarceration or a subsequent parole violation and Bryan Benham is returned to the care and custody of the Department of Corrections (or any facility to which the DOC transfers the CLAIMANT).

## **C. INDEMNITY**

CLAIMANT, expressly agrees to indemnify and hold the RELEASED PARTIES harmless, at CLAIMANT'S expense, from and against ALL CLAIMS asserted by or on

behalf of any person or entity, specifically, MEDICARE AND MEDICAID whether a party to this Agreement or not, claiming by, through, or under CLAIMANTS, regardless of whether the RELEASED PARTIES were responsible for, at fault for, negligent, whether solely or concurrently, strictly liable, or in breach of any contract, in whole or in part, for the OCCURRENCE, or any damages arising therefrom.

#### D. LIENS

a. CLAIMANT agrees and acknowledge that it is their sole and exclusive obligation to satisfy all liens, conditional payments, debts, rights of subrogation, and/or any other claims or actions asserted against them and/or the proceeds of this settlement, whether now known or unknown, including, but not limited to any liens by any medical provider, and [REDACTED] liens resulting from the payment of a claim for hospital or other care and treatment of Bryan Benham.

b. CLAIMANT further agrees to release the RELEASED PARTIES from any liens, debts, rights of subrogation, and/or any other claims or actions asserted against them and/or the proceeds of this settlement by anyone claiming by, through, or under CLAIMANT, whether now known or unknown, including any [REDACTED] liens resulting from the payment of expenses for hospital or other care and treatment of Bryan Benham.

c. CLAIMANT further agrees to defend, indemnify and hold harmless the RELEASED PARTIES from any damages, demands for payment or reimbursement, liens, debts, rights of subrogation, and/or any other claims or actions asserted against them and the proceeds of this settlement, by anyone claiming by, through, or under CLAIMANT, whether now known or unknown, including any [REDACTED] liens resulting from the payment of expenses for hospital or other care and treatment of Bryan Benham.

d. CLAIMANT specifically warrants that any [REDACTED] liens, whether now known or unknown, resulting from the payment of expenses for hospital or other care and treatment of Bryan Benham's injuries and damages, will be fully satisfied by the CLAIMANT from the settlement proceeds or otherwise, and that the CLAIMANTS will provide MHM Service's Inc.'s counsel, Jonathan A. Lax, Esq., and the New Hampshire Department of Correction's Counsel, Lynmarie Cusack, Esq., with proof of payment in full of all outstanding liens.

e. Bryan Benham, declares and expressly warrants that he is not [REDACTED]

Relying on these representations, no [REDACTED] is being established. In the event that any of the above information provided by CLAIMANT is

false or in any way incorrect, the CLAIMANT shall be solely liable for any and all actions, cause of actions, penalties, claims, costs, services, compensation or the like resulting from these inaccuracies. CLAIMANT acknowledges that Medicare may require CLAIMANT to exhaust the entire settlement proceeds on Medicare covered expenses should Bryan Benham become Medicare eligible within thirty (30) months. CLAIMANT specifically waives any claims for damages against RELEASED PARTIES, including a private cause of action provided in the MSP, 42 U.S.C. Section 1395(b)(3)(A), should Medicare deny coverage for any reason, including the failure to establish a set aside allocation to protect Medicare's interest. CLAIMANT, upon advice of counsel, and in accord with this release, agrees that any and all applicable medical and other liens related to this litigation are to be paid out of the settlement proceeds, and that Medicare and any other lien claims are the sole responsibility of CLAIMANT, with nothing further to be sought from the RELEASED PARTIES. In the event that this information is false or in any way incorrect, CLAIMANT expressly warrants and agrees that said liens will be CLAIMANT'S sole responsibility and will be paid from these settlement proceeds with nothing further to be sought from the RELEASED PARTIES.

#### **E. WARRANTY AND CAPACITY TO EXECUTE AGREEMENT**

CLAIMANTS represent and warrant that no other person or entity has or has had any interest in ALL CLAIMS of the CLAIMANT. CLAIMANT further represents and warrant that they have the sole right and exclusive authority to execute this Agreement and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement, Release and Agreement, other than the counsel, if any, representing CLAIMANT on the day this Agreement is executed.

#### **F. ENTIRE AGREEMENT AND SUCCESSORS-IN-INTEREST**

Any and all prior agreements between CLAIMANT and the RELEASED PARTIES related to the medical treatment is hereby merged into this instrument, such that this Settlement, Release and Agreement contains the entire agreement between CLAIMANT and the RELEASED PARTIES with regard to the medical treatment and CLAIMS. CLAIMANT agrees that there can be no modification, amendment or supplementation of any of the terms of this Settlement, Release and Indemnity Agreement without the express written consent of the PARTY affected thereby. The CLAIMANT and the RELEASED PARTIES agree that contractual obligations not related to the medical treatment are not superseded by this Agreement.

#### **G. REPRESENTATION OF COMPREHENSION OF DOCUMENT**

In entering into this Settlement, Release and Agreement, Bryan Benham represents that he understands this document and that he was represented by counsel of his choice who explained the terms hereof to him, and answered any questions he had pertaining to the document, and that he fully understood and has voluntarily accepted its terms.

## **H. GOVERNING LAW**

This Settlement, Release and Agreement shall be construed and interpreted in accordance with the laws of the State of New Hampshire.

## **I. ADDITIONAL DOCUMENTS AND ACTIONS**

The parties agree to cooperate fully and execute any and all supplementary documents, including but not limited to a Stipulation of Dismissal with Prejudice, and Neither Party docket markings which will be prepared and filed by CLAIMANT'S counsel, Randy Reis, Esquire. CLAIMANT'S counsel, Randy Reis, Esquire, will also take the steps necessary to obtain the necessary approvals pursuant in order to effectuate this RELEASE, and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

## **J. SEVERABILITY**

The parties stipulate and agree that these provisions, and each portion of each provision, of this Settlement, Release and Agreement are severable, and that all provisions are valid and enforceable. If, however, for any reason, any portion of this Settlement, Release and Indemnity Agreement is held to be void or invalid, any remaining provisions shall remain in full force and effect.

## **K. EFFECTIVENESS**

This Settlement, Release and Agreement shall become effective following execution by CLAIMANT.

## **L. COPY AND FORM**

Copies of these documents, scanned, faxed, or otherwise, are as enforceable as the original as long as a signature is present. This document is enforceable in multiple copies if all copies yield, in total, at least one signature per party.

EXECUTED in multiple originals on this the 10<sup>th</sup> day of October,  
2018.

Bryan Benham

Bryan Benham

STATE OF NEW HAMPSHIRE

§

COUNTY OF Merrimack

§

BEFORE ME, the undersigned authority, on this day appeared Bryan Benham known to me to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 10<sup>th</sup> day of Oct., 2018.

Bryan Benham

Notary Public  
Justice of the Peace  
State of New Hampshire

My Commission Expires: